IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5521 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SONI VITHALDAS HARIBHAI - Petitioner
Versus
SURESH MULSHANKAR JANI - Respondent

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Appearance :
MR NK MAJMUDAR for Petitioners.
RULE SERVED to Respondent No. 1.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 07/12/2005

ORAL JUDGMENT

1.The petitioner, namely, Vagheswari Mata Temple Trust through its Trustees has filed this petition under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the award passed by the Labour Court, Vadodara in Reference (LCV) No. 653/89 on 30.04.1992. The Labour Court has directed the petitioner Trust to reinstate the respondent in service to his original post with continuity of service and 50% of back wages.

2.The petition was admitted on 18.08.1992. Notice as to interim relief was issued by the Court. On 09.09.1992, this Court has passed an order after recording the statement made on behalf of the learned advocate appearing for the petitioners that the respondent has refused to receive the notice and has granted interim relief as per prayer 10 (c) subject to the

working of Section 17-B of the Industrial Disputes Act, 1947. The said interim relief was continued till further order by an order dated 15.02.1993. It appears that the respondent has never appeared in this proceeding nor he has moved any application under Section 17-B of the Act.

3.It is the case of the petitioners that the respondent had not joined any of the Trustees as party before the Labour Court. The Trustees were not aware as to whether any such proceedings were initiated. Even the Trust was not aware about the proceedings as none of the Trustees was joined as party nor any Trustee has received Summons about the said matter and taking advantage of the same, the respondent on the ground that nobody appeared on behalf of the Trust, ultimately seemed to have requested the Labour Court to pass ex-parte order. The Labour Court after giving finding that nobody

had appeared on behalf of the Trust inspite of the fact that reasonable opportunity was given, has accepted the oral say and evidence of the respondent and passed an order of reinstatement with 50% of back wages by an order dated 30.04.1992.

4.It is also the case of the petitioner that the respondent had filed a Civil Suit bearing R.C.S. No. 1359 of 1985 in the Court of learned Civil Judge (S.D.), Baroda wherein the respondent had joined the Trustees as parties. In the said suit, he has prayed that his father was giving services as Pujari in the temple and thereafter, he was rendering services as Pujari and that since the Trust was trying to put another donation box, the aforesaid suit was filed challenging the action and declaration to that effect. The Trial Court in the order passed below Exh. 5 has observed that respondent, who was the plaintiff in the said

suit, had absolutely no right in the temple property and, therefore, there was no prima facie case in favour of the respondent for doing puja of the temple or to collect the income of the Trust. All these facts seemed to have been suppressed by the respondent and deliberately the respondent has not joined the Trustees as parties in the Reference before the Labour Court. It is also the case of the petitioner that another suit was filed by one Harishankar Girijashankar, a close relative of the respondent, in the Civil Court at Baroda, being Civil Suit No. 1510 of 1985. In the said suit, he has also claimed the same right as a Pujari. Ultimately, the said suit was ordered to be abated by the Trial Court. This fact clearly established that the respondent, though having knowledge of this fact, had deliberately suppressed the same before the Labour Court and intentionally did not serve the Summons on the Trustees who were managing the affairs of the

Trust. The father of the respondent was performing puja work of the temple and except puja work, he had no other right in the temple. Still, the respondent tried to take advantage of the situation, as the Trust was not properly represented before the Labour Court. It is also the case of the petitioner that the petitioner Trust is not an industry. So, on the face of it, the provisions of Industrial Disputes Act would not apply. Not only that, even assuming that the respondent was doing puja, then also he could not be said to be a worker. All these questions could have been raised before the Labour Court. However, in absence of the proper representation on behalf of the petitioner – Trust, the Labour Court has passed the impugned award holding that the respondent was a worker and he was entitled to be reinstated with 50% back wages.

5.After having heard learned advocate appearing

for the petitioner and after having considered the impugned award passed by the Labour Court as well as the facts stated and the averments made in the petition and the documents attached with the petition, the Court is of the view that the petitioner – Trust has not been properly heard before the Labour Court as no notices have been served on the Trustees of the petitioner – Trust. Had the case of the petitioner – Trust been properly represented before the Labour Court, the Labour Court would have considered the issues raised by the petitioner – Trust before this Court. These very issues could have been raised before the Labour Court and that could have been properly adjudicated by the Labour Court. In absence of any representation on behalf of the petitioner – Trust, the Labour Court has accepted the statement of claim made by the respondent and was also persuaded by the evidence led by the respondent – workman. Whether the respondent

was working as a pujari or he has got any right to receive the income of the Trust and the respondent – workman can be considered as a workman within the meaning of Industrial Disputes Act are the questions which require proper adjudication. Since this has not been done and straightway the Labour Court has passed the award directing the petitioner – Trust to reinstate the respondent – workman with continuity of service and 50% of back wages, this Court is of the view that the Labour Court could have issued proper notices on the Trustees of the petitioner – Trust and could have adjudicated the issues raised before it. The award passed by the Labour Court is, therefore, in the opinion of this Court is violative of the principles of natural justice. The reference is of 1989 and the award was passed on 30.04.1992. Normally, the Court would not have remanded the matter to the Labour Court for deciding afresh. However, the

respondent has not appeared before this Court at any point of time and in absence of proper representation on behalf of the respondent before this Court, and further looking to the peculiar facts of this case, the Court hereby quashes and set aside the impugned award passed by the Labour Court in Reference (LCV) No. 653/1989 with a direction to the Labour Court, Vadodara to decide the reference afresh after giving adequate opportunity to the petitioner – Trust as well as its Trustees. Since the matter is very old, the Labour Court is hereby directed to decide the said Reference within six months from the date of receipt of the writ of this Court or from the date of receipt of certified copy of this order, whichever is earlier. It is made clear that the Labour Court will not be influenced by its earlier order or by any observations made by this Court in the present order.

6.Subject to the aforesaid direction and observation, this petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

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